PUBLIC PROSECUTOR

v.

TEO HENG CHYE

HIGH COURT, SINGAPORE
P COOMARASWAMY J
[CRIMINAL CASE NO. 23 OF 1986]
15 JUNE 1989

CRIMINAL PROCEDURE: *Culpable homicide - Section 304(b) Penal Code [Sing] - 1st charge - Sentenced to 8 years - 2nd charge - Sentenced to 6 years - To run consecutively - Whether sentences are manifestly excessive - Factors taken into account - Intoxication - Report to CID - Use of bearing scraper - Injuries on deceased - Whether sentences should run consecutively or concurrently.*

The accused faced two charges of murder under s. 302 of the Penal Code. He was found guilty of the lesser offence of culpable homicide under s. 304(b) on the two charges of murder and sentenced to 8 years imprisonment on the 1st charge and to 6 years imprisonment on the 2nd charge. The two sentences were ordered to run consecutively. The accused appealed against the sentences on the ground that they were manifestly excessive.

Held:

[1] In determining sentence, regard was had to the fact, *inter alia*, that the intoxication of the accused was self-induced and the repeated stabbings produced the fatal injuries. In all the circumstances of the case, the totality of 14 years was not too much.

[2] On general principles and by virtue of illustration (b) to s. 71 of the Penal Code, the order of consecutive sentences was appropriate.

Cases referred to:
Marimuthu Balikrishnan v. PP [1974] 2 MLJ 145
Faulkner [1972] 56 Cr App R 594
Mahomed Syedol Ariffin v. Yeoh Ooi Gark [1916] 2 AC 575
Lala Balla Mah v. Ahad Shah [1918] AIR PC 249

Legislation referred to:
Criminal Procedure Code [Sing], s. 170(1)
Penal Code [Sing], ss. 71, 85(2), 86(2), 302, 304(b)

For the public prosecutor - Ismail Hamid; Attorney-General's Chambers
For the accused - M. Puvanendram (Puvan Kumar with him); M/s. Isaac & Puva

JUDGMENT

P Coomaraswamy J:

Teo Heng Chye, the accused, faced two charges before us. They were that he on or about 22 March 1985 at about 12.49am at Plaza Bowl, Textile Centre, 200 Jalan Sultan, Singapore:

(1) did commit murder by causing the death of one Lim Nam Hoe and he had thereby committed an offence punishable under s. 302 of the Penal Code, Chapter 103 and,

(2) did commit murder by causing the death of one Koh Tong Kwee and he had thereby committed an offence punishable under s. 302 of the Penal Code, Chapter 103.

At the end of the prosecution's case, we were of the view that the evidence led by the prosecution justified our calling upon the accused for his defence. We accordingly did so and he gave evidence and the submissions of his Counsel and that of the Deputy Public Prosecutor, we found him guilty of the lesser offence of culpable homicide under s. 304(b) on each of the two charges of murder on which he was before us. After having heard his Counsel's plea of mitigation, we sentenced him to 8 years' imprisonment on the first charge involving Lim and to 6 years' imprisonment on the second charge involving Koh. We also ordered the two sentences to run consecutively commencing from the date of his arrest, 22 March 1985. He now appeals against the sentences on the ground that they are manifestly excessive.

The evidence adduced before us showed that the charges arose out of events in the concourse of the Plaza Bowl shortly before 1am on the morning of 22 March 1985. The Plaza Bowl is a bowling alley in a building complex called the Textile Centre in Jalan Sultan, Singapore. A level above the Plaza Bowl and with easy access to and from it is an establishment called the Second Home Restaurant and Cocktail Lounge ('the lounge'), primarily a bar and night club.

On the evening of 21 March 1985, the accused had been drinking with some friends in the lounge. There was a confrontation between the accused and his friends on the one hand another group of five customers at another table at the lounge on the other. A girlfriend of the accused, Miss Poh Peng Hoi, nicknamed 'Siow Huay', was with him.

Among the events that took place between this group and the accused was an attempt by the group to turn the accused's table over. A question was addressed by Koh (the second deceased who was nicknamed "Ah Kwee") to the accused. The question was in Hokkien and a literal translation is, "Are you heavy enough?". In the jargon of frequenters, this question is virtually a challenge to a fight. Richard Sim (Sim), shareholder in the lounge, and a manager assisting him did their best to calm down the parties. According to Sim, Koh responded to Sim's efforts, listened to him and calmed down.

There was also evidence that one person from each group later shook hands with the other. As a result of this confrontation, the accused asked Siow Huay to go and look for a friend of his called Richard Lee (Lee). Sim described Lee and the accused as close friends. Lee frequented the Plaza Bowl and lived in a room in a flat on the 18th level of the Textile Centre. The accused said he sent Siow Huay to summon Lee because some people were rushing towards him.

The evidence also is that he asked Siow Huay to get into his car which she had earlier parked on the road beside the Textile Centre and to wait for him. According to her, the accused had told her that on locating Lee, she was to tell him he was upstairs, (i.e., in the lounge), that he had a 'problem' there and to ask Lee to go up to the lounge. She met Lee in the bowling alley where he was at the tail end of a bowling game. She gave Lee the accused's message, telling him he had a problem in the lounge and that he wanted Lee to go upstairs. Lee wanted to finish the bowling game he was playing before he went up.

She then went to the accused's car, drove it, did a U-turn and parked it on the far side of the road from the Textile Centre so that it faced North Bridge Road without having to make any turn. She remained waiting in the driver's seat.

Whilst Sim and his manager were in the process of calming down the two groups, Lee, according to Sim, whom we believed, came up to the lounge. (The accused, however, said he went down and met Lee in the bowling alley concourse). He stood beside the accused.

Sim saw Lee whispering something to the accused but was unable to hear what was said. The accused and Lee then left the lounge. According to the accused, he told Lee that a group of people wanted to beat him up and the two of them went up to Lee's flat, he going, according to him, because Lee told him, "follow me".

In Lee's flat, to which he had been a number of times before, Lee gave him an object which Lee got from a bathroom. The accused claimed not to know what it was but described it to us as an object with a wooden handle and with a sharp point at the other end. In fact, it was a bearing scraper. He described the object as similar to the exhibit tendered by the prosecution as the weapon used to inflict injuries on Lim and Koh. This bearing scraper was in fact handed over to the police by the accused.

The accused and Lee came down in the lift and went towards the concourse of the bowling alley. In the meantime, Sim had continued pacifying Koh and his friends and advising them that it was best they left the place. They accepted his advice and on the way out, Koh in fact shook hands with Danny Tan, who earlier had been in the accused's company at his table in the lounge. Sim followed Koh and his four friends, one of whom was Lim. Another friend of Koh's, Goh Meng Hua (nicknamed "Ah Meng") was still unruly and Sim was trying to pacify him when they were in the concourse of the bowling alley on their way out.

It was at this point that Sim saw the accused coming up the staircase towards the concourse of the bowling alley. Anticipating a further problem, Sim opened the door and rushed towards the accused. He told him, "Everything has already been settled. Why are you here?". Unfortunately, Sim tripped and fell down the staircase, losing his glasses in the course of doing so. Whilst on the floor, he heard the footsteps of more than one person going up the staircase towards the bowling alley. He recovered himself and entered the concourse. He heard the accused say in Hokkien words to the effect of, "You want to know how heavy I am". This is jargon for "You can have a try". This was addressed to Lim, Koh and his three friends.

Ah Meng was still unruly and Sim made a further effort to pacify him. Things happened very fast after this with people running around and next, Sim saw Koh going towards the accused, wanting to land a punch on him. When he turned round from pacifying Ah Meng, Koh was on the verge of collapsing and soon after that, Lim also collapsed. There was then in Sim's graphic words, "A sudden pause, silence, sudden silence. Everything was somewhat like a standstill and when I looked at the accused, he was standing there holding something in his hand". Giving evidence on this point, Sim raised his right hand to his shoulder to show the level at which the accused's hand was. It was also gripping something. Sim identified the object as something like the bearing scraper tendered in evidence.

In the Course of the melee, the two deceased were severely injured. The evidence is that Lee had no weapon which could inflict the injuries of the type found on the deceased. Further, the serious injuries on each were in the unchallenged opinion of Dr. Wee Keng Poh, Forensic Pathologist of the Singapore General Hospital, consistent with those caused by the bearing scraper produced in evidence.

The bearing scraper was throughout the time from the accused leaving Lee's flat till he handed it over to the police at the CID in the accused's possession. The accused and Lee then went to the ground level of the Textile Centre and crossed the road to where Siow Huay was waiting in the accused's car. The accused's walk was unsteady and he needed Lee's assistance. En route, the accused had greeted a person called Allan Lee and wished him good night.

The accused sat in the front seat of this car. Siow Huay was in the driver's seat and Lee in the back seat. According to the accused, he told Siow Huay to go to the CID. This was because, according to him, in the car he realised his hand was stained with blood and he knew he had fought with someone and he desired to make a report. On the way to the CID, Lee asked that he be dropped off. Before leaving the car, he told the accused not to implicate him in whatever he told the police and that he was to take responsibility for what happened. To this, the accused's response was that he was a gentleman. Lee has not been heard of since but according to the information of the Investigating Officer, he is in prison in Taiwan on a murder-cum-kidnapping charge.

The police evidence is that at the CID, the accused told the policemen that he wanted to make a report but in his evidence he could not recall having said this. In many ways, in his evidence, he seemed to be able to recall all facts that were neutral or favourable to him but not facts which were unfavourable, attributing this inability to recall or lack of knowledge. This, he claimed, resulted from his being 'tipsy' or 'shocked'. At the CID, he handed to the police the bearing scraper he had brought with him from the Plaza Bowl.

He had been drinking in the lounge and the evidence is that he was under the influence of liquor but our finding was that his intoxication was self-induced, not rendering him insane at the relevant time and not to the extent required by s. 85(2) of the Penal Code to constitute a defence to a criminal charge. However, we were of the view that the degree of intoxication was such that it should be taken into account for the purpose of determining whether the accused had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the charges he faced as provided in s. 86(2) of the Panel Code.

On the facts was decided that the degree of intoxication was such that he could not have formed any of the intentions required for murder. We were, however, of the view that his actions were done with the knowledge that they are likely to cause death and, giving him the benefit of every doubt, without any intention to cause death or to cause such bodily injury as is likely to cause death. In view of this, we found him guilty under s. 304(b) of the Penal Code on each of the two charges that he faced.

We sentenced him to 8 years' imprisonment for the culpable homicide of Lim and to 6 years' imprisonment of the culpable homicide of Koh.

In determining sentence, we had regard to all the facts of the case, the fact that the intoxication was self-induced and the nature of the respective injuries on each deceased. We also took into account the fact that the accused of his own volition went immediately to the CID after the attack on the two deceased. This last fact carried only a little weight as a mitigating factor. The accused was a frequent patron and was well known to the management and other customers at both the Plaza Bowl and the lounge. There were eyewitnesses to his earlier confrontation with the deceased's' group in the lounge and to the attacks he made on the deceased persons. He must have realised that it was virtually impossible for the arm of the law not to reach him before very long. Further, he agreed not to implicate Lee, his 'accomplice', to give him the most innocent label.

In considering all the facts of the case, we took into account Sim's successful efforts at pacifying the other group and getting them to go away whereas the accused with the help of his good friend, Lee, went with him to the latter's flat and came down to the concourse of the bowling alley with the bearing scraper. The accused could easily have remained in his flat or got away from the Textile Centre. The inference is irresistible that the accused came back with Lee to resume the confrontation, now armed with the bearing scraper. This resulted in two deaths.

As will appear hereafter, two of the three fatal wounds on Lim were on the back of his chest. So was the single fatal wound on Koh. This clearly shows each had his back to the accused when these wounds were inflicted by him.

We will now set out the injuries on the two deceased. According to Dr. Wee, the wounds on the deceased Lim were as follows:

(a) Five linear scratches, punctures and abrasions on the head.

(b) A superficial stab wound cutting only the posterior muscles of the chest wall.

(c) A triangular shaped stab wound in the left lower anterolateral chest wall with tips measuring 2.2 by 2 by 2 cm. It was 10½ cm deep. It penetrated the full thickness of the left anterolateral chest wall into the pleural cavity through the sixth rib and the sixth intercostal muscles, cutting through the left diaphragm into the left lobe of the liver. The direction of the wound was from front to back, downwards and medially.

(d) A stab wound on the right upper chest wall, triangular in shape with tips measuring 2 by 2 by 2 cm and 11 cm in depth. It penetrated the posterior muscles of the chest into the right pleural cavity through the posterior border of the right fourth rib and cutting the right lower lobe of the lung. In direction, it was back to front, downwards and medially.

(e) A triangular shaped stab wound in the lower right posterolateral chest wall below the level of the shoulder tip. It was 13 cm deep and penetrated the full thickness of the right pleural cavity through the ninth rib and right diaphragm and into the right lobe of the liver. In direction, this injury too was on the back, going towards the front, downwards and medially.

In the opinion of Dr. Wee, any one of the three injuries (c), (d) and (e) was sufficient by itself in the ordinary course of nature to cause death. It was also Dr. Wee's opinion that the three fatal wounds on Lim could have been by the bearing scraper produced as an exhibit.

The injuries on the deceased Koh were as follows:

(a) ½ cm diameter circular puncture wound on right forehead.

(b) A small laceration and two scratch abrasions on various parts of the face.

(c) A stab wound 2 cm by 1 cm and 3 cm deep cutting the skin and floor of the left side of the jaw with no penetration into the mouth. This wound was back to front, upwards and towards the middle.

(d) Slash wound on left shoulder 4½ cm deep and 1½ cm wide. This wound cut the skin and the muscles of the left shoulder tip.

(e) A stab wound on the back of the left mid chest wall. This wound penetrated the chest wall into the left pleural cavity through the posterior segment of the fifth rib cutting the thoracic aorta at a tangent and the left lower lobe of the lung near the apex into the hilum of the left lung. It also cut into the left pulmonary artery at the base of the pericardial sac. This wound ran from back to front medially and slightly downwards.

The last listed wound (e) was described by Dr. Wee as the fatal wound. It was also Dr. Wee's opinion that this fatal wound on Koh could have been caused by the bearing scraper produced as an exhibit.

Besides the factors stated earlier, the nature of the injuries and the principal ones being inflicted on the respective backs of Lim and Koh warranted the sentences of 8 years and 6 years respectively. In our view, the repeated stabbings producing three fatal injuries on Lim justified the 8-year sentence in respect of Lim compared to the 6-year sentence in respect of Koh who received only one fatal wound.

The next question that arose was whether the sentences were to run consecutively or concurrently. Undoubtedly, the two deaths were the result of "a series of acts as to form the same transaction". It was this that led him, under s. 170(1) of the Criminal Procedure Code, to be tried at one trial for both offences. The Penal Code and the Criminal Procedure Code give no direct guidance as to consecutive and concurrent sentences. That the High Court has jurisdiction to make sentences for convictions for different offences at the same trial consecutively cannot be challenged; (see ss. 17 and 18 of the Criminal Procedure Code).

The only Singapore case where the principles involved in consecutive and concurrent sentences is *Marimuthu Balikrishnan v. PP* [1974] 2 MLJ 145. The appellant in that case was convicted by the District Court of two offences under the Firearms and Ammunition (Unlawful Possession) Act (Chapter 100 of the District Judge's sentence of three years' imprisonment on each charge to run consecutively. On appeal, it was argued that the appellant took out the gun and five rounds of ammunition from the same place and sold them to a police officer acting as agent provocateur. The learned Chief Justice held that the consecutive sentences were not wrong in principle. In effect, he dismissed the appellant Counsel's submission that the two offences arose out of the same transaction and instead considered the appropriateness of totality of the sentences. This latter principle was the principle used in the case of *Faulkner* [1972] 56 Cr App R 594.

Whilst on general principle and on the particular facts of this case, we regarded consecutive sentences as appropriate. We also derived support for our view from the two illustrations to s. 71 of the Penal Code. They read:

> (a) A gives Z 50 strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for 50 years, one for each blow. But he is liable only to one punishment for the whole beating.
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> (b) But if, while A is beating Z, Y interferes and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

Both illustrations deal with multiple occurrences of the same offence. The distinguishing factor between the two illustrations is that in illustration (a) although there are 50 offences and they take place in the same transaction, there is one victim. In illustration (b) on the other hand, there is still one transaction but there are two victims of the accused on whom he voluntarily caused hurt. The illustration provides that the accused is liable to one punishment for voluntarily causing hurt to one victim and to another for the blow given to the other victim. This clearly means consecutive sentences.

In our view, illustration (b) to s. 71 is applicable to the case before us. In view of this, we made the two offences run consecutively.

On the use of illustrations in statutes, we need only refer to two Privy Council cases. The first is an appeal from Penang, then part of the Straits Settlements, and concerns the Evidence Ordinance (now Act). In *Mahomed Syedol Ariffin v. Yeoh Ooi Gark* [1916] 2 AC 575 at 581, the Judicial Committee said that:

> ... it is the duty of a Court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired.

In the other case, *Lala Balla Mah v. Ahad Shah* [1918] AIR PC 249, the Judicial Committee was even more direct and brief. This was an appeal from India and turned on interpretation of the Contract Act. At p. 250 (right column), the Judicial Committee said:

> Four illustrations (to s. 16) are given. These are to be taken as part of the statute.

We also considered the totality of the two sentences which is 14 years. In this, we were following the words of the Lord Chief Justice of England in *Faulkner* (*supra*, at p. 596) where he said, "However, at end of the day, as one always must, one looks at the totality and asks whether it was too much".

We asked ourselves this question and felt that having regard to all the facts of the case as referred to by us, the totality of 14 years was not "too much" and in our view, entirely appropriate. Our order was that the sentences were to run from the date of arrest of the accused, 22 March 1985.

Also found at [1990] 1 CLJ 194